

**STATE OF COLORADO**  
**COLORADO DEPARTMENT OF AGRICULTURE**  
**700 Kipling Street, Suite 4000**  
**Lakewood, CO 80215-5894**

**DOCKET NO. A-20**

**MARKETING ORDER TO PROMOTE AND REGULATE THE MARKETING OF MILK  
AND MILK PRODUCTS IN THE STATE OF COLORADO**

**WHEREAS,** The Commissioner of Agriculture of the State of Colorado, having reason to believe that the issuance of a Milk Marketing Order would tend to effectuate the declared purposes of Title 35, Article 28, Colorado Revised Statutes 1973 ("The Colorado Agricultural Marketing Act of 1939"), held public hearings, upon due notice thereof, and did duly issue a Colorado Milk Marketing Order on September 25, 1963; which Milk Marketing Order was reissued in amended form by the Commissioner on August 18, 1965; on July 13, 1967; on April 1, 1970; on January 15, 1971; on July 1, 1973; On April 15, 1976; on July 1, 1978; on June 1, 1980; on May 1, 1981; on December 1, 1983; On March 5, 1984; on August 1, 1984; on July 1, 1986; on July 1, 1987; on March 1, 1988; on January 1, 1992; on July 1, 1995, on May 1, 2000 and on May 15, 2003.

**WHEREAS,** Public Hearings were conducted by the Commissioner, upon due notice, on May 15, 2003, with respect to further amendment of the said Milk Marketing Order; and the Commissioner has solicited and received information from interested persons regarding such amendment;

**WHEREAS,** Having considered all of the information available to him, the Commissioner of Agriculture finds that this Milk Marketing Order, as amended, regulating the handling of milk and milk products marketed in the State of Colorado will tend to:

1. Reduce economic waste and prevent the unreasonable or unnecessary waste of agricultural wealth, through the elimination of disorderly marketing and through the control of unfair competition;
2. Assist in the maintaining of adequate prices for producers of milk by maintaining a healthy climate of fair competition among those purchasing such agricultural commodity from the producer thereof; and
3. Protect the interests of consumers of such agricultural commodity and assure such consumers of a continuing adequate and healthful supply of milk and milk products at a reasonable cost; and

**WHEREAS,** In making the findings herein set forth, the Commissioner of Agriculture has taken into consideration any and all facts available to him with respect to the economic factors pertinent to amendment of the previously existing Milk Marketing Order; and

**WHEREAS,** This Milk Marketing Order, as amended, regulating the handling and distribution of milk and milk products marketed in the State of Colorado applies equally to all persons of a like class who are engaged in the handling and distribution of such milk and milk products in Colorado;

**NOW, THEREFORE,** It is ordered by the Commissioner, acting under the authority vested in him by the Colorado Agricultural Marketing Act of 1939, as amended, that the handling and distribution of milk and milk products marketed in the State of Colorado, from and after the date herein specified, shall be in conformity to and in compliance with the terms and conditions of this amended Milk Marketing Order.

## **SECTION I**

### **DEFINITIONS**

As used herein, the term:

1. **"COMMISSIONER"** means the Commissioner of Agriculture or his duly authorized representative.
2. **"ACT"** means the Colorado Agricultural Marketing Act of 1939, Colorado Revised Statutes 1973, 35-28-101 et. seq.
3. **"PERSON"** means an individual, partnership, corporation, association, or any other business entity.
4. **"MILK"** means the lacteal secretion obtained by the milking of one or more cows and reconstituted milk derived from the recombining of dry milk solids, evaporated or condensed milk with water, and which is pasteurized or otherwise processed for sale as fluid milk in its several forms, whether cultured or with added bacteria or other ingredients regardless of grade or fat content, including whole milk, low fat milk, cream, chocolate milk, plain buttermilk, cream buttermilk, skim milk, special or premium milk, flavored milk or milk drinks, sterile milk, dietary modified milk, liquid milk shake mix, half and half, eggnog, eggnog drink and other milk-cream mixtures. Said term excludes the lacteal secretion of one or more dairy cows where the secretion is to be sold for any purpose other than human consumption.

5. **"MILK PRODUCTS"** means ice cream, ice cream mixes, sherbet, sherbet mixes, ice milk, ice milk mixes, sour cream, cottage cheese and any similar substances, mixtures or compounds, regardless of the name under which they are sold. "Milk Products" does not mean dried skim or dried whole milk, evaporated or condensed milk, dips, dressings, butter, yogurt, yogurt mixes or manufactured items containing milk which have been processed into a different form.
6. **"MILK MARKETING BOARD"** means the Board established pursuant to Section II of this Order.
7. **"MARKETING AREA"** means the various geographical marketing areas in the state established by the Commissioner. The current marketing areas are set forth in Appendix A to this Order.
8. **"PRODUCER"** means any person engaged in the business of milking cows and thereby producing raw milk for marketing or causing such milk to be produced for market.
9. **"HANDLER"** means any person engaged in the operation of a licensed dairy plant and responsible to state and/or federal authorities for pasteurizing milk or milk products within or without the State of Colorado, any of which milk or milk products are sold, offered for sale, or marketed within the State of Colorado by any person.
10. **"PRODUCER-HANDLER"** means any handler engaged in processing and pasteurizing milk which he has produced, and such person shall generally be included within the term "handler" unless otherwise specified.
11. **"HANDLER-DISTRIBUTOR"** means a person whose services are arranged for by a handler to deliver and market the handler's milk and/or milk products at least twenty-five percent of which is marketed to wholesale or home delivery customers in which the handler-distributor has no financial interest.
12. **"DISTRIBUTOR"** means any person, other than a handler or handler-distributor, engaged in the operation of selling, marketing, or distributing milk or milk products other than at retail in the State of Colorado which he has purchased or acquired from a handler, producer-handler, or a handler-distributor, whether as owner, agent, broker, or otherwise, and shall include a person who has milk processed for him by a handler.
13. **"RETAILER"** means any person who purchases or acquires milk or milk products for resale at retail to the general public in the State of Colorado. The term specifically does not include a handler, handler-distributor, or distributor who sells milk and/or milk products at retail to individual customers at their homes.
14. **"TO HANDLE"** means to be engaged in the business of a handler as herein defined.

15. **"TO DISTRIBUTE"** means to be engaged in the business of a handler-distributor or distributor as herein defined.
16. **"SHIP"** means to transport, offer for transportation, or ship milk and milk products by rail, truck or any other means whatsoever.
17. **"FISCAL YEAR"** means the twelve-month period beginning January 1 of any year and ending upon December 31 of the same year, both dates inclusive.
18. **"SELL"** means a transaction wherein the ownership of a product is transferred from one person to another person for consideration.
19. **"WHOLESALE PRICE"** means Full Service Delivery, Limited Service Delivery, Dock Delivery or Point of Delivery Limited Service.
20. **"RETAIL PRICE"** means the price charged to a person who does not resell the product.
21. **"EQUIPMENT"** includes all things having value and a functional purpose.
22. **"CUSTOMER"** means any person other than a handler, producer-handler, handler-distributor, or distributor, who purchases milk or milk products or receives milk or milk products for any purpose whatsoever.
23. **"WHOLESALE CUSTOMER"** means any person other than a handler, producer-handler, handler-distributor, or distributor, who purchases milk or milk products for resale.
24. **"SIGN"** means any article, board or device containing advertising or information, whether stationary or movable, lighted or unlighted, mechanized or unmechanized, and of any size, shape, form or composition whatsoever.
25. **"POINT-OF-SALE"** means the premises to which the delivery of milk or milk products to the buyer thereof occurs.
26. **"DISCOUNT"** means any reduction in either the wholesale or retail price of milk or a milk product which a customer is required to pay.
27. **"REBATE"** means any reduction in the wholesale or retail price of milk or milk products accomplished by the return to the customer of a part of the price paid or by delivery to the customer of money or other thing of value, after payment of the full wholesale or retail price.

28. **"FULL SERVICE DELIVERY"** means the delivery of milk and milk products to a customer at the customer's place of business and may include the placing and arranging of products in the customer's display cases and crediting the customer for the return of out-of-date or defective milk or milk products.
29. **"LIMITED SERVICE DELIVERY"** means the transfer of milk or milk products to a customer at the door, loading platform or walk-in refrigerated cooler of the customer's permanent place of business, with the customer assuming full responsibility for such milk or milk products at the time of delivery (except for products determined to be defective at the time of delivery and returned by the customer not later than the fifth day following the date of delivery). This limited service delivery shall not include price marking, case stocking, or credit for returned products, except as allowed above, either at the point of delivery or any other place. Limited service delivery shall only be made to customers who obtain products for resale to the public for consumption off the premises of the customer. Limited service delivery shall only be available to customers who resell milk or milk products in the same form in which they purchase them.
30. **"DOCK DELIVERY"** means the transfer of milk or milk products to a customer at the door or loading platform of the handler's, handler-distributor's or distributor's permanent place of business with the customer assuming full responsibility for such milk or milk products at the time of delivery (except for products determined to be defective at the time of delivery and returned by the customer not later than the fifth day following the date of delivery); and without the furnishing of any additional services, assistance or considerations of any kind to the customer by the handler, handler-distributor, or distributor either at the point of delivery or any other place.
31. **"PLACE OF BUSINESS"** means a permanent place of business and specifically shall not include any equipment designed or used for mobile purposes.
32. **"COOPERATIVE ADVERTISING"** means the advertising on behalf of a handler, handler-distributor, or distributor combined with advertising on behalf of a customer or prospective customer in one advertisement, in whatever form that advertisement may take, where the cost of the advertisement is shared by the handler, handler-distributor, or distributor, and the customer or prospective customer. Such "cooperative advertising" includes material used in connection with the openings of new businesses or new business locations, but does not include the preparation and circularization of a completely independent congratulatory message, so long as the cost of such separate message is borne entirely by the handler, handler-distributor, or distributor.

Advertising promoting two products (i.e. "peaches and cream" or "cookies and milk") shall not be deemed to be Cooperative Advertising so long as the advertisement does not identify or refer in any fashion to a specific customer or prospective customer of milk and milk products of the handler, handler-distributor, or distributor.

33. **"COST"** means the cost of raw materials, labor and all related costs of doing business.
34. **"COST OF DOING BUSINESS"** means all costs incurred in the purchase, processing, sale and other related activities relevant to the item in question and must include without limitation the following items of expense: labor (including salaries of executives or officers), rent, interest on borrowed capital, depreciation, cost of selling, maintenance of equipment, delivery costs, credit losses, cost of all licenses, taxes, insurance, and advertising.
35. **"HOME MARKETING AREA"** means the marketing area in which the processing or bottling plant processing milk or milk products sold in Colorado is located in the event said plant is within the State of Colorado. In the event said plant is located outside the State of Colorado then the home marketing area shall be the physical facility, such as a dock, in the State of Colorado from which the milk or milk products are distributed. In the event there are multiple physical facilities in the State of Colorado, the home marketing area shall be the physical facility which has the highest dollar volume of sales of milk and milk products in the State of Colorado. In the event there is no physical facility within the State of Colorado used by the handler, handler-distributor, distributor to distribute milk or milk products within the State of Colorado, then the home marketing area of said handler, handler-distributor or distributor shall be the marketing area in which the handler-distributor or distributor has the highest dollar volume of sales of milk and milk products in the State of Colorado.
36. **"HOME SERVICE DELIVERY"** means the delivery of milk and milk products to the residences of consumers for consumption by the consumers and not for resale.
37. **"POINT OF DELIVERY LIMITED SERVICE"** means the transfer of milk or milk products to a customer's available refrigeration where such refrigeration is the primary merchandising space as well as the sole point of delivery and storage for the milk or milk products located at the customer's permanent place of business, with the customer assuming full responsibility for such milk or milk products at the time of delivery (except for products determined to be defective at the time of delivery and returned by the customer not later than the fifth day following the date of delivery). This Point of Delivery Limited Service shall not include price marking or credit for returned products, except as allowed above, either at the point of delivery or any other place. Point of Delivery Limited Service shall only be made to customers who obtain products for resale to the public for consumption off the premises of the customer. Point of Delivery Limited Service shall only be available to customers

who resell milk or milk products in the same form in which they purchase them.

## **SECTION II**

### **MILK MARKETING BOARD**

The membership of the Board and selection of members and alternates shall be as provided below.

#### **1. ESTABLISHMENT AND MEMBERSHIP**

A Milk Marketing Board consisting of five (5) members, all of whom shall be handlers, is established. There shall be an alternate for each member.

#### **2. REPRESENTATION FOR BOARD MEMBERS**

Representation on the Milk Marketing Board shall be as follows:

All five (5) members shall be handlers in the State of Colorado, selected at large, one of whom shall be a handler who produces at least fifty-one percent (51%) of the raw milk processed and distributed by him. There shall be only one member selected to represent a single business entity and its subsidiaries or affiliates.

#### **3. NOMINATION AND SELECTION OF MEMBERS**

- A. At least thirty (30) days prior to the end of the fiscal year, a meeting of handlers shall be held for the purpose of selecting nominees for members and their alternates on the Milk Marketing Board.
- B. At each such meeting, one or more nominees shall be designated for each impending vacancy as member or alternate. Such designation may be by ballot or by motion, at the option of those present in voting capacity.
- C. Only handlers may participate in designating nominees.
- D. Each handler shall be entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives. Members of the same household producing and marketing milk jointly in any combination shall be considered one person and shall have but one vote. Proxy voting shall be prohibited.

4. **FAILURE TO NOMINATE**

If nominations are not made pursuant to the provisions of Section II-3 by the date provided therein, the Commissioner may, without regard to nominations, select members and alternates on the basis of the representation provided for in this subsection.

5. **QUALIFICATION BY MEMBERS AND ALTERNATES**

Any person selected by the Commissioner as a member or an alternate for a member of the Milk Marketing Board shall qualify therefor by filing a written acceptance with the Commissioner within fifteen (15) days after being notified of such selection.

6. **TERM OF OFFICE**

The term of office of each Milk Marketing Board member and alternate shall be for two years, with the terms of two members and their alternates expiring on alternate years from the terms of the other three members and their alternates.

Each member of the Board shall serve until his successor is selected and qualified.

7. **ALTERNATE MEMBERS OF THE MILK MARKETING BOARD**

An alternate for a member shall act in the place and stead of such member during such member's absence or in the event of death, removal, resignation, or disqualification of such member, and until a successor for such member is selected and has qualified.

8. **VACANCIES**

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for his unexpired term may be selected by the Commissioner from nominations made pursuant to Section II-3 from previously unselected nominees on the current nominee list, or from other eligible persons.

9. **POWERS AND DUTIES**

By virtue of the authority hereby delegated to the Milk Marketing Board by the Commissioner, and acting in the Commissioner's behalf, the Milk Marketing Board shall have the following powers and duties, subject to the review of the Commissioner:

- A. To administer this marketing order;
- B. To employ necessary personnel, including an attorney approved by the Attorney



General of the State of Colorado, to fix their compensation and terms of employment, and to incur and pay such expenses from monies collected as herein provided, as it may deem necessary and proper to enable the Milk Marketing Board to properly perform all of its duties as authorized herein;

- C. To recommend to the Commissioner administrative rules and regulations relating to this Order;
- D. To receive, investigate, and report to the Commissioner complaints of violations of this Order;
- E. To recommend to the Commissioner amendments to this Order;
- F. To submit to the Commissioner for his approval an estimated budget of expenses necessary for the operation of this Order, and also to submit for approval a method of assessing and collecting such funds as the Commissioner may find necessary for administration of this Order;
- G. To collect and disburse fees assessed for administration of this Order, according to the terms and conditions specified herein;
- H. To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the Milk Marketing Board, which minutes, books, and records shall be subject at any time to examination by the Commissioner;
- I. To cause the books of the Milk Marketing Board to be audited by a competent accountant at least once each fiscal year and at such times as the Board may deem necessary, or as the Commissioner may request, and to file with the Commissioner and the Governor copies of any and all audit reports;
- J. To give the Commissioner the same notice of all meetings of the Milk Marketing Board as given to the members;
- K. To select a chairman and such other officers of the Milk Marketing Board as may be deemed advisable;
- L. To perform such duties as may be assigned to it by the Commissioner in connection with the administration of this Order; and
- M. To cooperate, consult and confer with committees and/or boards administering

other marketing agreements and orders and with other governmental agencies and industry groups engaged in marketing research and development activities deemed beneficial to the marketing of milk and milk products.

10. **PROCEDURE**

- A. A majority of all members of the Milk Marketing Board shall be necessary to constitute a quorum or to pass any motion or approve any Board action.
- B. The members of the Milk Marketing Board, including successors, alternates and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Commissioner for cause at any time. Each and every regulation, decision, determination, or other act of the Board shall be subject to the continuing right of the Commissioner to disapprove of the same at any time, and upon such disapproval shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Commissioner.
- C. Upon the death, removal, resignation, or expiration of term of office of any member of the Board, all books, records, and other property of the board in his possession shall be delivered to his successor in office or to the Board, and such assignments and other instruments shall be executed as may be necessary to vest in his successor or the Board full title to all books, records, and other proper possessions under the control of such members pursuant thereto.

**SECTION III**

**FILING AND USE OF PRICES, DISCOUNTS, AND REBATES**

1. **FILING OF PRICES**

Each handler, handler-distributor, or distributor shall file with the Commissioner a complete schedule of wholesale prices for the sale of milk or milk products in the marketing area in which such sale or offer to sell is made. All schedules of prices shall include each item of milk and milk products which is offered for sale, and shall specify the size and type of container. All schedules will be effective immediately upon approval by the Commissioner of Agriculture unless a later effective date is requested.

The selling, soliciting or offering for sale of any item of milk or milk products at a price that has not been filed and approved by the Commissioner of Agriculture shall be prohibited.

Prices shall be filed for only those milk and milk products, containers and types of service which are

used or intended for use by the handler, handler-distributor, or distributor in the marketing area to which the prices apply. The type of services to be offered to the customer shall be limited to the following: Home Service Delivery, Full Service Delivery, Dock Delivery, Limited Service Delivery and Point of Delivery Limited Service. Other types of service shall be offered only with the advance written approval of the Commissioner.

A uniform price must be filed for all sales of the same item to the same class of customer. The filing of a different price for an identical item simply because a different label is used is prohibited. The prices posted for different labels of a similar item may differ only when there is an actual difference in the quality or content of the product or a cost difference in the packaging of the product, i.e. Milk is Milk.

Home Service Delivery prices need not be filed with the Commissioner of Agriculture; however, all other provisions and requirements of this Order apply to Home Service Delivery.

## **2. FILING OF DISCOUNTS AND REBATES**

Each handler, handler-distributor or distributor shall file with the Commissioner a complete schedule of discounts or rebates to be utilized in a designated marketing area. Any discount or rebate predicated on any basis other than the dollar volume of sales of milk and milk products made at point of sale or in any other form must first be submitted to the Commissioner for approval and, unless approved by the Commissioner, may not be utilized.

Discounts and rebates shall be filed for only the following types of service to customers which are used or intended for use by the handler, handler-distributor, or distributor; Full Service Delivery; Dock Delivery; Limited Service Delivery; and Point of Delivery Limited Service. Any discount or rebate filed with the Commissioner shall be made uniformly available to all customers on like terms and conditions.

Before offering or giving any volume discount or rebate, the handler, handler-distributor or distributor shall have an approved schedule on file with the Commissioner of Agriculture containing said discounts or rebates.

### **A. Pyramid Discounts and Rebates**

Where necessary to meet competition, a handler, handler-distributor, or distributor may be permitted to provide to a customer at a point of sale an amount of discount or rebate equal to the discount or rebate which would be available to that customer from any competitive handler, handler-distributor, or distributor if the total purchases of the customer at the point of sale were all made from that competitor, provided that written approval for the use of such competitive discount is first obtained from the Commissioner. Such discounts or rebates shall not be available in the case of dock deliveries. In situations where separate

schedules of discounts or rebates are applied to ice cream as distinguished from milk or other milk products, or where a handler, handler-distributor, or distributor distributes only ice cream or only milk and other milk products, then the discount which may be permitted will be determined by the total volume of purchases by the customer at the point of sale of the product to which the discount or rebate is to be applied.

3. **FILING OF SCHEDULES BY HANDLER**

Each handler selling or offering for sale any milk or milk products in the State of Colorado, either directly or through the use of a handler-distributor, or distributor, shall file a schedule of prices, discounts, and rebates with the Commissioner, as provided above. Such schedules shall be subject to review and approval by the Commissioner.

4. **FILING OF SCHEDULES BY HANDLER-DISTRIBUTORS**

Each handler-distributor selling or offering for sale any milk or milk products in the State of Colorado shall have on file with the Commissioner a complete schedule of prices, discounts, and rebates, as provided above. Such schedule may be filed either by the handler-distributor or by the handler whose products the handler-distributor distributes. In all cases, the handler concerned shall be responsible for the filing of schedules by each and all of the handler-distributors distributing his products.

Schedules of prices, discounts and rebates filed by a handler-distributor for use in any marketing area shall not reflect net prices lower than the net prices filed for use in that marketing area, for the same type of delivery, by the handler for which he distributes milk or milk products.

5. **FILING OF SCHEDULES BY DISTRIBUTORS**

Each distributor selling or offering for sale any milk or milk products in the State of Colorado shall have on file with the Commissioner a complete schedule of prices, discounts, and rebates, as provided above. Such schedule may be filed either by the distributor or by the handler whose products the distributor distributes. In all cases, the handler concerned shall be responsible for the filing of schedules by each and all of the distributors distributing his product.

Schedules of prices, discounts, and rebates filed by a distributor for use in any marketing area shall not reflect net prices lower than the net prices filed for use in that marketing area, for the same type of delivery, by the handler for which he distributes milk or milk products.

6. **CHANGING PRICES, DISCOUNTS AND REBATES**

Each handler, handler-distributor, or distributor desiring to utilize different prices, discounts, and rebates from those on file with the Commissioner shall forward to the Commissioner a new schedule of prices, discounts and rebates which will become effective immediately upon approval by the Commissioner, unless a later date is requested.

7. **PROCEDURE FOR FILING SCHEDULES**

To comply with the requirements for the filing of schedules of prices, discounts, and rebates, a handler, handler-distributor, or distributor shall deliver to the Commissioner an **original and one (1) copy** of a schedule of prices, discounts, and rebates for each applicable marketing area on a form approved by the Commissioner. If the schedule is in proper form, one (1) copy will be appropriately marked and returned to the person submitting it. If the schedule so filed is not proper in form or otherwise disapproved by the Commissioner, the person filing it will be advised and procedures for review, as hereinafter provided, shall be utilized.

The Commissioner may provide that schedules of prices, discounts and rebates be filed in separate parts, with each part to include prices for a designated category of milk or milk products or discounts and rebates. The terms "schedule" and "schedules" as used in this Order shall mean any separate part or any combination of parts and shall be subject to procedural instructions issued by the Commissioner.

For a schedule of prices, discounts and rebates to be and remain valid, the party filing the schedule shall, upon request of the Commissioner, submit evidence satisfactory to the Commissioner that the party filing the schedule has engaged in the active solicitation of one or more customers within thirty (30) days of the filing of the schedule to sell at the prices, discounts or rebates set forth in the filed schedule. In addition, the party filing the schedule may also be required to submit evidence satisfactory to the Commissioner that the schedule would not result in prices below cost or constitute unfair competition or tend to contravene the declared purposes of the Order. Such evidence will include, but not be limited to, correspondence, telephone or in-person contact reports and affidavits. In the event that no solicitation of customers can be demonstrated, the Commissioner may suspend the use of such schedule or any part thereof for a designated period of time, but in no event more than sixty (60) days. In the event such action to suspend the schedule is taken, a hearing shall be promptly held at which testimony and evidence shall be taken by the Commissioner and the Commissioner may permanently refuse to permit the use of the schedule or any part thereof if he finds that the use of such schedule or any part thereof would result in prices below cost or constitute unfair competition or tend to contravene the declared purposes of the Order.

8. **REVIEW OF SCHEDULES FILED**

Schedules of prices, discounts and rebates filed by handlers, handler-distributors, and distributors shall be subject to review by the Commissioner. The Commissioner may extend for a designated period of time, but in no event more than sixty (60) days, the effective date for use of such schedule or part thereof, when, in his judgment, reasonable grounds exist for a belief that the use of the schedule or any part thereof would result in prices which are below cost or constitute unfair methods of competition or tend to contravene the declared purposes of this Order.

In the event such action to extend the effective date is taken, a hearing shall be promptly held at which testimony and evidence shall be taken by the Commissioner, and the Commissioner may permanently refuse to permit the use of the schedule or any part thereof if he finds that the use of such schedule or any part thereof would result in prices which are below cost or constitute unfair methods of competition or tend to contravene the declared purposes of this Order.

9. **SUSPENSION OF SCHEDULES**

If the Commissioner has reasonable grounds to believe that the use of a schedule of prices, discounts, and rebates or parts thereof, then in effect is resulting in prices that are below cost or constitute unfair methods of competition or tend to contravene the declared purposes of the Order, the Commissioner may suspend the use of such schedule or any part thereof for a designated period of time, but in no event more than sixty (60) days.

In the event such action is taken, the handler, handler-distributor, or distributor whose schedule is suspended shall utilize the prices, discounts, and rebates contained on the last schedule previously filed, and a hearing shall be promptly held at which testimony and evidence shall be taken by the Commissioner, and the Commissioner may permanently refuse to permit the use of the suspended schedule or schedules if he finds that the use of such schedule or any part thereof would result in prices which are below cost or constitute unfair methods of competition or tend to contravene the declared purposes of this Order.

10. **ADJUSTMENT OF TIMES FOR FILING SCHEDULES**

The provisions above with respect to times for filing schedules of prices, discounts, and rebates and for cancellation of schedules filed may be adjusted by the Commissioner, in special circumstances, where such action is necessary to accomplish the purposes of this Order. A handler desiring such adjustment shall submit a written request to the Commissioner fully stating the reasons for such request.

11. **UNIFORM TREATMENT**

The schedule of prices, discounts, and rebates on file with the Commissioner shall be utilized by the handler, handler-distributor, or distributor filing such prices for all sales of milk and milk products.

The wholesale prices, discounts, and rebates on file with the Commissioner shall be charged by the handler, handler-distributor, or distributor filing such prices for all sales to stores, restaurants, hotels, boarding houses, nursing homes, hospitals, and all retailers entitled to wholesale prices.

No handler, handler-distributor, or distributor shall sell or offer for sale, directly or indirectly, any milk or milk products in any established marketing area at prices less than the prices filed by that handler, handler-distributor or distributor for that handler, handler-distributor, or distributor's home marketing area, except when such sales are made in good faith to meet prices filed by a competitor and when the handler, handler-distributor, or distributor has filed a proper schedule of prices, discounts, and rebates for use in that marketing area.

The only exceptions to this requirement of uniform treatment pursuant to filed prices shall be those set forth in subsections 12, 14, 15 and 16 of this section.

12. **MEETING UNREGULATED COMPETITION-DEVIATION**

In the event that a handler, handler-distributor, or distributor who has filed a schedule of wholesale prices, discounts, and rebates under the provisions of this Order, believes it necessary to deviate from such schedule to meet the prices of an unregulated entity, it shall submit a request to the Commissioner in writing describing the proposed deviation, specifying the locality involved, the name of the unregulated entity whose prices it proposes to meet, and the prices to be used to meet said unregulated entity. Such deviations shall be limited to those necessary to meet such unregulated competition and shall be confined in terms of time, area and prices to that offered by the unregulated competition. Should the Commissioner fail to advise the handler, handler-distributor, or distributor requesting such a deviation of the Commissioner's response to such a request within thirty-six (36) hours of its receipt by the Commissioner, the handler, handler-distributor or distributor may implement the proposed price deviation until notified to the contrary by the Commissioner.

13. **TRANSFER PRICES**

A handler, handler-distributor, or distributor owning, operating, or controlling a retail outlet which sells milk or milk products obtained from that handler, handler-distributor, or distributor, shall be required to file with the Commissioner a schedule showing the dock transfer prices and/or the delivered transfer prices at which such milk and milk products are sold to such retail outlet, and the provisions of subsections 1 through 10 shall be applicable in all respects to the filing of such net prices or changes therein. Retail outlets who own, operate, or control a handler may file dock transfer and/or delivered transfer prices.

14. **SALES TO SCHOOLS AND GOVERNMENT AGENCIES**

The sale of milk and milk products to the following institutions and agencies shall be exempt from the requirement for uniform sales at filed prices, discount, and rebates:

- A. Elementary schools, limited to all grade schools through high school grades, public, private, parochial, or otherwise that are operated for the same basic educational purposes as public schools and which provide similar non-profit lunchroom facilities for the benefit of students.

- B. Agencies of the Federal, State, County, or Municipal governments or agencies operated thereby.

The exemption available to schools and governmental agencies under this paragraph is available to commercial entities when a school or governmental agency chooses to provide milk or milk products through a contractual relationship with a commercial entity in lieu of providing milk or milk products through its own employees. However, the foregoing exemption for commercial entities is limited to such milk and milk products actually used pursuant to a contract with a school or governmental agency for the purpose of providing milk or milk products that otherwise would have been provided by the school or governmental agency.

Sales of milk and milk products to such excepted schools and agencies shall not be made at prices below cost.

Any handler, handler-distributor, or distributor who enters into a contract for the sale of milk or milk products to such an excepted school or agency shall file with the Commissioner prior to the first date of delivery, a separate schedule or a copy of the awarded contract showing the price or prices at which milk or milk products will be sold under the provisions of the contract.

15. **TRANSACTIONS BETWEEN HANDLERS**

Sales or transfers of milk or milk products by one handler to another handler shall not be subject to the requirement that sales be made at filed prices, and such transactions may be at a price negotiated between such handlers, provided that the negotiated price is above cost and further provided that such milk and milk products are transferred by one handler to the licensed dairy plant, warehouse or truck of the other handler. Such inter-handler transactions shall specifically not include delivery of milk and milk products by one handler to customers of another handler or to retail outlets operated by another handler.

16. **TRANSACTIONS BETWEEN HANDLERS AND HANDLER-DISTRIBUTORS**

Sales or transfers of milk and milk products by a handler to a handler-distributor shall not be subject to the requirement that sales only be made at filed prices, and such transactions may be at a price negotiated between the handler and handler-distributor, provided that the negotiated price is above cost, except as set forth in paragraph 17 of this Section III.

The Commissioner may request, on a confidential basis, information with respect to such transactions. Such information, including the pricing arrangement between the parties, shall be confidential and shall be available only to the Commissioner, full-time employees of the Department



of Agriculture designated by the Commissioner, the Director of the Colorado Milk Marketing Board, the Attorney representing the Commissioner, and the Attorney representing the Board, except in the event that the Commissioner determines that administrative or court action is necessary for proper enforcement of this Milk Marketing Order, and, in such event, the information may be used in connection with the administrative hearing or court proceeding.

17. **TRANSACTIONS BETWEEN HANDLERS AND HANDLER-DISTRIBUTORS HAVING AN OWNERSHIP INTEREST IN A RETAILER**

Any sales of milk and milk products made by a handler to a handler-distributor which has any interest in a retailer or group of retailers, or which is owned or operated directly or indirectly, by any retailer or groups of retailers, or which is employed by any retailer or group of retailers, which milk or milk products are sold or transferred to that retailer or group of retailers, shall be subject to the requirement that sales be made only at filed prices. Such transactions may not be made on a negotiated basis between the handler and the handler-distributor.

Any handler-distributor which purchases milk or milk products from a handler pursuant to this paragraph shall, within ten (10) days of any such transaction, set forth in writing and retain separately in its files a list of all items of milk and milk products sold or transferred to it by the handler for sale or transfer to any retailer or group of retailers in which that handler-distributor has an ownership interest, or which has an ownership interest, direct or indirect, in that handler-distributor, or which employs that handler-distributor, together with the size and type of container sold and transferred, and the posted price at which such milk products were sold to the handler-distributor.

Any handler which sells or transfers any milk or milk products to any handler-distributor pursuant to this paragraph shall, within ten (10) days of any such transaction, set forth in writing and retain separately in its files a list of all items of milk and milk products sold to the handler-distributor for sale or transfer to any retailer or group of retailers in which that handler-distributor has an ownership interest, or which has an ownership interest, direct or indirect, in that handler-distributor, or which employs that handler-distributor, together with the size and type of container sold and transferred, and the posted price at which such milk products were sold to handler-distributor.

A true and accurate list of the items purchased or sold pursuant to this paragraph shall be retained for a period of not less than three (3) years, and shall be available for inspection by the Commissioner upon request.

18. **TRANSACTIONS BETWEEN HANDLERS OR HANDLER-DISTRIBUTORS AND DISTRIBUTORS**

Sales of milk and milk products by a handler or handler-distributor to a distributor shall only be made at the prices on file by that handler or handler-distributor for such products, and the only discounts or rebates which may be made to the distributor shall be those filed by the handler or

handler-distributor making the sale.

19. **LEASING**

- A. The leasing of any equipment, directly or indirectly, to a customer, prospective customer or any purchaser of milk or milk products, by any handler, handler-distributor or distributor is prohibited.
- B. Notwithstanding the same terms of subparagraph A above, a handler, handler-distributor or distributor may lease a truck to a customer, prospective customer or other purchaser of milk or milk products so long as it is pursuant to a written agreement of no less than ninety (90) days duration, for a period of time of not less than eight (8) hours at any one time and at a commercially reasonable rate adequate to reimburse said handler, handler-distributor or distributor for all direct and indirect costs of said truck. All such agreements shall be available for inspection by the Commissioner and the burden to prove that said rate is adequate to cover all direct and indirect costs shall be on the respective handler, handler-distributor or distributor. In making a determination of a commercially reasonable rate, the truck shall be valued at its fair market value on the date the lease is signed.
- C. Notwithstanding the terms of subparagraph A above, a handler, handler-distributor or distributor may lease a complete retail store including all customary equipment, to a customer, prospective customer or other purchaser of milk or milk products so long as said lease does not have the purpose or effect of reducing the prices for milk or milk products on file with the Commissioner.
- D. Notwithstanding the terms of subparagraph A above, a handler, handler-distributor or distributor may make an employee available to a customer, prospective customer or other purchaser of milk or milk products so long as it is pursuant to a written agreement of no less than ninety (90) days duration, for full-time employment during the duration of the lease and at a rate adequate to reimburse said handler, handler-distributor, or distributor for all direct and indirect costs of said employee. All such agreements shall be available for inspection by the Commissioner and the burden to prove that said rate is adequate to cover all direct and indirect costs shall be on the respective handler, handler-distributor or distributor.
- E. The leasing of space in a retail facility or any equipment, directly or indirectly, by a handler, handler-distributor or distributor from a customer, prospective customer or any purchaser of milk or milk products is hereby prohibited.
- F. Notwithstanding the terms of subparagraph E above, a handler, handler-distributor or distributor may lease equipment or space from a handler.
- G. Notwithstanding the terms of subparagraph E above, a handler, handler-distributor or distributor may lease a complete retail store or complete dairy processing facility from a

customer, prospective customer or other purchaser of milk or milk products so long as said lease does not have the purpose or effect of reducing the prices for milk or milk products on file with the Commissioner.

H. Notwithstanding the terms of subparagraph A above, a handler, handler-distributor, or distributor may lease portable refrigerated units to a purchaser or prospective purchaser of milk and milk products provided that the following conditions are met:

(1) The lease is at a fair market value. In determining whether a lease is at fair market value, the Commissioner may consider, among other things, the cost of leasing a comparable refrigerated unit from commercial leasing sources as well as the purchase price of such equipment plus freight, labor, current rate of interest and installation costs. If used equipment is leased, the fair market value of the equipment at the time of the lease may be considered.

(2) The lease requires equal monthly payments over the period of the lease. The period of the lease may be from 24 to 48 months, with the first monthly payment to be made upon installation. The lease may be renewed at the completion of the lease period.

(3) Payments are maintained on a current basis and if any payment is delinquent in excess of ninety (90) days, the equipment is removed from the customer's premises. Removal of equipment is the responsibility of the lessor.

(4) A written lease shall be executed in each instance specifically stating in clear and unequivocal language that the lessee may use the leased equipment for any purpose at the lessee's sole discretion including the storage and sale of milk and milk products from companies other than the lessor.

(5) Complete records are maintained which reflect all items in (1), (2), (3) and (4) above, and such records are made available to the Commissioner upon request.

20. **PUBLIC RECORDS**

All schedules of prices, discounts and rebates filed with the Commissioner shall be decreed to be a public record and open to inspection by any person at reasonable times and copies of any such filings shall be provided to any person so requesting upon the payment of a reasonable fee as set by the Commissioner.

21. **SALES PROMOTION**

A handler, handler-distributor or distributor may engage in a sales promotion for milk or milk products without amending the schedule of prices then on file with the Commissioner of Agriculture by filing a sales promotion form with the Commissioner of Agriculture. However, no sales

promotion shall be used in connection with the sale of milk or milk products in the State of Colorado which does not comply with the following:

- A. No sales promotion shall result in the sale of milk or milk products below cost.
- B. No item of fluid milk shall be the subject of sales promotion for more than fourteen (14) days in any sixty (60) day period of time.
- C. No sales promotion shall be made unless it is offered uniformly to all customers within a marketing area within the same class of service.

Each handler, handler-distributor, and distributor shall maintain records for a period of at least three (3) years showing that each customer receiving a sales promotion complied with all terms and conditions contained on the sales promotion form filed with the Commissioner of Agriculture, and such records should be made available to the Commissioner of Agriculture upon request.

## **SECTION IV**

### **UNFAIR PRACTICES AND UNFAIR COMPETITION**

For the purpose of eliminating unfair competition in the marketing of milk and milk products and to prevent the destruction of competition and injury to competitors, and following requirements and restrictions shall apply to all handlers, handler-distributors, and distributors:

#### **1. INDIRECT DISCOUNTING AND REBATING**

The offering, granting, giving, leasing, or furnishing, directly or indirectly, of anything of value (other than milk, milk products) offered for sale at the prices set forth on the schedule filed with the Commissioner, to a customer, a prospective customer or any purchaser of milk or milk products, by any handler, handler-distributor, distributor, or by an officer, agent, employee, any branch sales station, or subsidiary of a handler, handler-distributor, or by any person for whom a handler manufactures milk or milk products under contract, is hereby prohibited.

The above prohibition includes, but is not restricted to, the following practices: Discounts or rebates (if not included in the schedules of prices filed by the handler, handler-distributor, or distributor as a discount or rebate or otherwise approved by the Commissioner), free services, free milk and/or milk products, or any other product or merchandise, free supplies, free equipment (except as provided in Section III, Paragraph 19), cooperative advertising, advertising allowances, seasonal holiday or other gifts to customers, or employees of customers, the granting of exceptional credit or the advancement of money or product, loans or endorsements, or guarantees of any

nature, except as provided below.

The above prohibition shall not prohibit:

- A. The distribution by a handler, handler-distributor or distributor of items to a wholesale customer having a cost of not more than fifty dollars (\$50.00) each to any wholesale customer; provided such items contain labeling of an advertising nature relating to the handler, handler-distributor or distributor or their products. Such items may not be distributed more than once in any 90 day period. This exception is not applicable to sales of milk or milk products to prospective or current home service delivery retail customers.
- B. The occasional entertainment of a customer or prospective customer at meals when a representative of a handler, handler-distributor, or distributor is also present.
- C. The occasional payment of admission tickets to athletic events, theater performances, concerts and similar public affairs for customers or prospective customers when such tickets are provided to a customer or prospective customer on a single event basis.
- D. The occasional entertainment of a customer or prospective customer at recreational activities, such as golf, tennis or similar activities, when the customer or prospective customer is a guest of and is accompanied by a representative of a handler, handler-distributor or distributor and only the usual charges are paid.

In no event shall such permitted entertainment expense include the cost of travel outside the State of Colorado.

- E. The loan of a refrigerated merchandiser (not solely a freezer unit) to a customer's retail outlet for the convenience of the handler, handler-distributor or distributor to dispose of distressed products of the handler, handler-distributor, or distributor. The maximum time a merchandiser may be loaned to a customer shall be limited to fifteen (15) days. Notice of the loan of such equipment shall be mailed by the provider of the equipment to the Commissioner within twenty four (24) hours after installation. This notice shall include the name of the customer, the installation location, date of installation, identity of the distressed products, and the name of the handler, handler-distributor or distributor providing the equipment.
- F. The provision to a customer of display materials used solely to advertise or display the handler's, handler-distributor's, or distributor's milk or milk products, brand name, or trade name without reference to the customer.
- G. The loan of one portable refrigerated unit for a maximum of 30 days to each prospective customer who is not selling milk or milk products from the premises in which the loaned portable refrigerated unit is placed. No handler, handler-distributor, or distributor shall

make such a loan to a prospective customer at the same premises more than one time. A simple and accurate record of all such loans shall be maintained by all handlers, handler-distributors, or distributors and made available for inspection by the Commissioner upon request.

Records reflecting all transactions of the type provided for in Paragraphs B, C, D, E and F above shall be maintained for a period of not less than three (3) years and shall be available for inspection by the Commissioner upon request.

2. **LOANS TO CUSTOMERS**

No handler, handler-distributor, or distributor, either directly or indirectly, through any subsidiary, officer, agent, employee, or otherwise, shall make or endorse or guarantee in any way any loan or obligation to any customer or prospective customer.

3. **PORCH BOXES**

The use of home service delivery customer porch boxes is permitted.

4. **DISCOUNTS TO EMPLOYEES**

Discounts to employees who purchase milk or milk products from a handler, handler-distributor, or distributor may be utilized in sales to regular employees for their own use and not for resale; provided that said employee receives compensation of at least \$50.00 a month for his services.

5. **COMBINATION SALES AND SALES OF OTHER PRODUCTS**

No handler, handler-distributor, or distributor shall combine the price of any other product, equipment or service with the price of milk or milk products, or otherwise engage in any practice for the purpose of, or with the effect of, reducing the prices for milk and milk products on file with the Commissioner.

No handler, handler-distributor, or distributor shall sell or offer to sell any other product to a customer purchasing or considering purchasing milk or milk products at more favorable terms than such other products are offered or sold to other customers or prospective customers not purchasing or considering purchasing milk or milk products.

6. **SALE OF EQUIPMENT**

The sale of equipment by a handler, handler-distributor, or distributor to a customer or prospective customer is prohibited except when all of the following conditions are met:

- A. When the purchase price of such equipment plus freight, labor, current rate of interest and installation costs are included in the sale price. The sale price for used equipment shall be

the fair market value at the date of sale.

- B. When the terms of payment for equipment sales require a minimum of twenty (20) percent down payment and substantially equal monthly payments on the balance for a period of not more than thirty (30) months, with the first monthly payment to be made within sixty (60) days from the date of installation; and when the transaction is documented by a written conditional sales agreement or secured by a financing statement on the equipment. No "Balloon Payment" shall be permitted.
- C. When payments are maintained on a current basis, and when equipment is removed from the customer's premises when any payment is delinquent in excess of ninety (90) days.
- D. When complete records are maintained which reflect all items in (A), (B), and (C) above, including the complete sales price, down payment, and schedule of payments for the balance due, and such records are made available to the Commissioner upon request.

7. **SERVICE TO CUSTOMERS**

The rendering of any service or repairs to facilities or property of a customer or prospective customer (whether leased or owned by the customer), including any assistance in carrying out the remodeling or renovation of a customer's or prospective customer's business premises by a handler, handler-distributor or distributor is prohibited.

8. **SIGNS**

Signs shall be utilized solely for advertising the handler's, handler-distributor's or distributor's milk and milk products, brand name or trade name without reference to the customer.

- A. Signs in place as of June 1, 1980, shall be considered to be in compliance with these rules and may be maintained and repaired but shall not be moved or installed in a new or different location.
- B. If a sign is sold to another handler, handler-distributor, or distributor by the handler, handler-distributor, or distributor now owning such sign, the purchasing party may change only the handler's, handler-distributor's, or distributor's advertising or trademark on the sign, in which event the purchasing party shall forward, within five (5) days, to the Commissioner a copy of the sale agreement.

9. **INDOOR SIGNS, BACKBARS, AND DISPLAY MATERIAL**

No handler, handler-distributor, or distributor shall furnish, give or install any indoor sign, backbar, or display sign, menu, or menu boards or other display material or display equipment for a customer except as follows:

- A. The sign or signs for any one customer at any location shall not exceed the following total, and may be single or double face:
  - 1) 60 square feet if the customer's place of business comprises 6,000 or less square feet of floor space
  - 2) 80 square feet if the customer's place of business comprises more than 6,000 square feet of floor space but less than 100,000 square feet; and
  - 3) 100 square feet if the customer's place of business comprises more than 100,000 square feet of floor space.
- B. The display material must be used solely to advertise or display the handler's, handler-distributor's, or distributor's milk and milk products, brand name, or trade name without reference to the customer.
- C. All signs in place as of June 1, 1980, will be considered in compliance; such signs can be repaired or repainted but shall not be moved or installed in a new or different location.

10. **MILK SAMPLING**

All sampling of milk and milk products to customers or prospective customers is prohibited except that milk or milk products may be used for sampling prospective customers at home or through store or other demonstrations, provided such product samples are removed from the original container, served in open containers and served in a quantity not exceeding seven ounces for consumption on the premises, or in individual containers containing not more than four ounces. Where sampling is accomplished through store or other demonstrations, all handlers, handler-distributors and distributors shall maintain and make available to the Commissioner for inspection upon request a simple and accurate record of the date, the quantity and identity of items sampled, and the name and address of the store cooperating in such demonstration. Samples of products may also be provided to prospective wholesale customers in an amount reasonably necessary to acquaint the wholesale customers with the product so long as it is not used for resale by the wholesale customers. All handlers, handler-distributors and distributors shall maintain and make available to the Commissioner for inspection upon request a simple and accurate record of the date, nature and amount of all samples provided to each wholesale customer or prospective wholesale customer. Further, a handler, handler-distributor, or distributor may sample a prospective home service delivery customer one time only within a period of ninety (90) days. Such sample shall be limited to one item of not more than the retail equivalent value of a 1/2 gallon of homogenized milk, based on the handler's effective price on 1/2 gallon homo on the date of the sampling, or such different amounts as may be later specified by the Commissioner, and shall be limited to one person only in a family or single household. A record must be made of all sampling of actual or prospective Home Service Delivery customers, showing date, name, and address of the customer and the



quantity and description of the product sampled.

11. **SAMPLES AND GIFTS**

No free samples of milk or milk products shall be given to stores for use in "free baskets" or other cooperative promotions. No seasonal or special gifts shall be given customers, purchasing agents, dietitians, or other personnel and customers.

12. **SALES TO NON-PROFIT GROUPS**

Any handler, handler-distributor or distributor may sell milk or milk products to any organized charity, church group or other non-profit group at said handler's, handler-distributor's, or distributor's schedule of prices on file with the Commissioner.

13. **EXCEPTIONAL EXTENSIONS OF CREDIT**

The granting of exceptional credit by a handler, handler-distributor, or distributor to a wholesale customer is prohibited. "Exceptional credit" shall include but not be limited to the extension of credit to a wholesale customer more favorable to said customer than credit terms which demand and obtain payment of all amounts unpaid for more than sixty (60) days from the date of delivery of the milk and milk products to that customer. Only cash or its equivalent shall be considered as payment meeting the above requirement.

In the event that a wholesale customer fails to pay any billing in full within the period established by the Commissioner, the handler, handler-distributor, or distributor serving such customer shall be in violation of this Order, unless he immediately terminates service to that customer or places such customer on a cash on delivery basis until such billing is paid in full.

14. **SALES BELOW COST PROHIBITED**

The sale of any milk or milk products by a handler, handler-distributor, or distributor at prices below the cost thereof to the seller is specifically prohibited.

It is a defense to a charge of sales below cost if the seller proves that the sales were made in good faith to meet a legal price of a competitor or if the seller can prove that the sales were not made for the purpose of injuring or eliminating competition and that such sales did not have the effect of eliminating or injuring competition.

Each handler, handler-distributor, and distributor shall maintain records to show the cost of all milk and milk products it is selling or offering for sale in the State of Colorado. Such records shall be made available to the Commissioner upon request for the purpose of determining the legality of posted prices.

15. **DECEPTIVE PRACTICES**

Solicitation of sales or customers through false or misleading statements with respect to either the nature, grade, or quality of the product, the actual effective price for the product, or the service to be provided to the customer, is specifically prohibited.

16. **RESPONSIBILITY OF HANDLERS FOR HANDLER-DISTRIBUTORS, DISTRIBUTORS, BRANCH PLANTS, SALES STATIONS, AND SUBSIDIARIES**

Each handler shall be responsible for seeing that his handler-distributors and distributors, branch plants, sales stations, subsidiaries, and officers, agents, or employees thereof, know and are acquainted with the provisions of this Order, and with rules and regulations promulgated by the Commissioner. Violations of this Order or the rules and regulations promulgated thereunder by an officer, agent, or employee of a handler-distributor or distributor, branch plant, sales station, or subsidiary may constitute grounds for the handler, handler-distributor, branch plant operator, or sales station operator to be subject to the enforcement provisions as outlined in Colorado Revised Statutes 1973, 35-28-116.

17. **UNAUTHORIZED USE OF MILK CASES**

No handler, handler-distributor, or distributor, either directly or indirectly, shall use, ship, borrow or otherwise possess or misappropriate milk cases or other containers used for handling or delivering milk or milk products if such cases or containers belong to any other person or entity without said person's or entity's authorization.

18. The foregoing provisions of this Section shall not be applicable to transactions between handlers, handler-distributors, and distributors and customers or prospective customers involving solely products other than milk or milk products. However, if the handler, handler-distributor, or distributor is selling or offering to sell both milk and milk products as well as other products to the same customer or prospective customer, then the foregoing provisions of this Section shall be fully applicable.

## **SECTION V**

### **FINANCING**

1. **EXPENSES**

The Milk Marketing Board is authorized to incur such expenses as the Commissioner finds are reasonable and likely to be incurred by such Milk Marketing Board for the administration and operation of the provisions of this Order. The Milk Marketing Board shall prepare and submit to the Commissioner a

proposed budget of expenses and a proposed rate of assessment for the then current fiscal year. The funds to cover such budgeted expenses shall be acquired by the levying of assessments as provided in this Section.

2. **ASSESSMENTS**

Each handler's pro rata share of such budgeted expenses shall be that proportion of such expenses which the total quantity of milk or milk equivalent utilized by that handler is of the total quantity of milk utilized by all handlers during said fiscal year. Such pro rata share shall be determined by assessment at the rate fixed by the Commissioner upon the quantity of milk and milk equivalent utilized by each handler. In no event shall such assessment rate exceed \$.03 per CWT on the amount of milk or milk equivalent utilized in a handler's plant or plants.

Assessments with respect to utilization in plants located outside the State of Colorado shall be limited to the portion of the total utilization in such plants which is utilized for the production of milk and milk products sold in Colorado, and shall be determined by procedures established by the Commissioner.

3. **COLLECTION OF ASSESSMENTS**

- A. All assessments made and levied pursuant to the provisions of this Milk Marketing Order shall be paid by the respective handlers who shall be primarily liable therefor. Such assessments shall be remitted to the Milk Marketing Board each month in an amount determined by application of the rate of assessment to the quantity of milk and/or milk equivalent utilized by the handler during the preceding months. Any handler who fails or neglects to remit such assessment to the Board upon demand shall be guilty of a violation of this Order.
- B. The Commissioner may, at the request of the Milk Marketing Board, require each and every handler directly affected by this Order to deposit with the Milk Marketing Board in advance an amount based upon the estimated gross volume of milk handled by such handler during any given fiscal year and based upon the rate of assessment for such fiscal year. At the close of such fiscal year, the sum so deposited shall be adjusted to the amount which is chargeable against such handler, upon the basis of the actual gross volume of milk handled by such handler during such fiscal year.
- C.
  - (1) In addition to the primary responsibility imposed upon handlers for the payment of assessments as provided in subparagraph (A) hereof, each distributor and handler-distributor shall be secondarily liable for payment of assessments levied against the handler whose milk and milk products he distributes.
  - (2) Thirty (30) days after the mailing of a notice of assessments from the Board to a handler, if the assessment remains unpaid, collection proceedings may be immediately commenced

against either the handler or his handler-distributors, or all, but collection proceedings against distributors are not contingent upon concurrent or prior collection attempts through legal proceedings against the respective handlers.

- (3) In addition to any administrative remedy, the Commissioner may seek a temporary restraining order and injunction to enjoin the distribution of any milk and/or milk products of any handler whose assessment is thirty (30) days delinquent. Such a temporary restraining order or injunction shall apply to all milk and/or milk products that are owned, possessed, or under the control of either handler, handler-distributor or distributor.
- (4) The Milk Marketing Board, with the approval of the Commissioner, shall establish methods and procedures for the collection of assessments.

#### 4. **ACCOUNTING**

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following procedures:

- A. The Milk Marketing Board, with the approval of the Commissioner, may carry over such excess into subsequent fiscal periods as a reserve.
- B. If such excess is not retained in a reserve as provided in subparagraph (A) of this subsection, it shall be refunded proportionately to the persons from which it was collected. Upon liquidation, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Commissioner may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

Any monies collected pursuant to this Order shall be deposited in a bank or banks, or other depository, approved by the State Treasurer, allocated to the Milk Marketing Board, and disbursed only for the necessary expenses incurred by the Board and the Commissioner and approved by the Commissioner. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the Commissioner.

## **SECTION VI**

### **COMPLIANCE**

The Commissioner, upon recommendation by the Milk Marketing Board, may establish methods and procedures by which handler, handler-distributors, and distributors shall transport, sell, ship, or handle milk products to insure compliance with all the provisions of this Order.

## SECTION VII

### **REPORTS AND RECORDS**

The Commissioner may require any and all handlers, handler-distributors, and distributors to maintain books and records reflecting their operations as such, to furnish to the Commissioner, or his duly authorized or designated representatives, such information as may be from time to time requested by him relating to such operations, and to permit the inspection by said Commissioner, of such portions of such books and records as relate to such operations.

Each handler, handler-distributor, and distributor shall maintain the following records:

1. A sales ticket or invoice shall be made in duplicate, showing the name and address for each wholesale sale (whether cash or charge), including all milk, milk products, and all miscellaneous products or commodities sold in conjunction with milk and milk products, showing in detail each item sold and the price charged. A similar ticket shall be made reflecting any return product credit showing item, container, size, unit price and reason for return. This return product record must be made for all returns on all types of sales. Each handler, handler-distributor, and distributor shall make and keep on file for at least three (3) years one (1) copy of such tickets or invoices, and all other customer records, including home delivery route records, accounts receivable, and customer payment records.
2. Records reflecting costs as specified in paragraphs 33, 34 of Section I.
3. All records normally utilized in the operation of the business of a handler, handler-distributor, or distributor.
4. Such other specific records as may be required by regulations issued by the Commissioner pursuant to the authority herein provided.

All handlers, handler-distributors, and distributors must maintain the records required by this Section at some point in the State of Colorado, including full records of all transactions with branches, divisions, districts, subsidiaries, or parent organizations which pertain to the sale of milk or milk products in the state, and of transactions with customers which relate to the sale of milk and milk products in this state; or if such records are not available in the State of Colorado, the handler, handler-distributor, or distributor shall be required to make such records available for examination at the point at which they are maintained outside the State of Colorado.

## **SECTION VIII**

### **LIABILITY**

The members of any such Milk Marketing Board duly appointed by the Commissioner, including employees of such Board, shall not be held responsible individually in any way whatsoever to any producer, handler, handler-distributor or distributor, or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of such Board. The liability of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

## **SECTION IX**

### **EFFECTIVE TIME AND TERMINATION**

#### **1. EFFECTIVE TIME**

The provisions hereof shall become effective at such time as the Commissioner may declare above his signature, attached hereto, and shall continue in force until terminated as specified in this Section.

#### **2. TERMINATION**

- A. The Commissioner may suspend or terminate any separate provision or provisions hereof whenever he finds that such provision or provisions do not tend to effectuate the declared purposes of the Act within standards and subject to the limitations and restrictions therein imposed, provided that such suspension or termination shall not be effective until the expiration of the then current fiscal year.
- B. If the Commissioner finds that the termination hereof is requested in writing not less than sixty (60) days prior to the end of a fiscal year, by more than fifty percent (50%) of the handlers who handled more than fifty percent (50%) of the volume of milk handled for market within the state, the Commissioner shall terminate the provisions hereof; provided that such termination shall be effective only at the end of the fiscal year in which such announcement of termination is made.
- C. The provisions hereof shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

#### **3. PROCEEDINGS AFTER TERMINATION**

Upon termination of the provisions of this Order, the Commissioner may appoint the members of the Milk Marketing Board then functioning to continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all property then in the possession or under the control of the Board, including property not delivered at the time of such termination; provided that, upon termination by the Commissioner of this marketing Order, any and all monies remaining and not required by the Commissioner to pay all creditors and defray the expenses of the marketing Order shall be returned by the Commissioner upon a pro rata basis to all persons from whom assessments were collected; provided further, however, that if the Commissioner finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the Commissioner may use the monies in such fund to defray the expenses incurred by him in the formulation, issuance, administration, or enforcement of any subsequent marketing Order for such commodity.

## **SECTION X**

### **ENFORCEMENT AND PENALTIES**

This Order shall be enforced and administered by the Commissioner and his duly authorized representatives pursuant to the provisions of Colorado Revised Statutes 1973, 35-28-101 et seq.

Any person who violates any provision of this marketing Order, or any provision of a regulation duly issued by the Commissioner hereunder, shall be in violation of Colorado Revised Statutes 1973, 35-28-116 and shall be subject to the penalties and remedies provided therein.

## **SECTION XI**

### **DURATION OF IMMUNITIES**

The benefits, privileges, and immunities conferred upon any person by virtue of this Order shall cease upon the termination of this Order, except with respect to acts done under and during the existence of this Order.

## **SECTION XII**

### **SEPARABILITY**

If any provision of this Order is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof, and the applicability thereof to any person, circumstance, or thing shall not be affected thereby.

## **SECTION XIII**

### **DEROGATION**

Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Commissioner, or of the State of Colorado, to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

## **SECTION XIV**

### **AMENDMENTS**

Amendments hereto may be proposed from time to time by the Milk Marketing Board or by the Commissioner. When such amendments are proposed, a hearing shall be held thereon.

## **SECTION XV**

### **RESEARCH**

Whenever the Milk Marketing Board deems it advisable that research programs be established in the fields of storing, transporting, marketing, handling, or processing of milk or milk products, it shall so recommend to the Commissioner. Whenever the Commissioner determines that to establish such research programs would tend to effectuate the declared purposes of the Act, he shall approve such research programs.

## **SECTION XVI**

### **ADVERTISING AND SALES PROMOTIONS**

Whenever the Milk Marketing Board deems it advisable to establish an advertising and sales promotion program, it shall so recommend to the Commissioner. Whenever the Commissioner determines that to establish such a program will tend to effectuate the declared purposes of the Act, he shall approve such advertising and sales promotion program.



**ORDER OF ADOPTION**

**AND**

**NOTICE OF ISSUANCE OF AMENDED MILK MARKETING ORDER**

Pursuant to Title 35, Article 28, Colorado Revised Statutes, I, Don Ament, Commissioner of Agriculture for the State of Colorado, pursuant to the authority vested in me by law, do hereby execute, issue, and publish this Amended Marketing Order at my office, in Lakewood, Colorado, this 15th Day of May, 2003 A.D., and do declare that I have this day posted a notice of issuance of this Amended Order on a public bulletin board in my office. Therefore, this Amended Order is hereby adopted and shall be in full force and effect on and after 12:01 A.M., MST, May 15, 2003.

Don Ament  
Commissioner of Agriculture